

48A C.J.S. Judges § 226

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VIII. Liabilities

B. Nature and Scope of Acts and Functions

§ 226. Taking insufficient bond

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  36

Apart from statute, the liability of a judge for failing to require a sufficient, or in taking an insufficient, bond in cases under the judge's jurisdiction depends on whether such act is considered a ministerial or a judicial act.

A judge may be liable in damages for taking an insufficient bond where the act is considered as ministerial, and the judge has failed to exercise ordinary care in the performance of his or her ministerial duty.¹ However, a judge is not answerable for damages resulting from a failure to take security or sufficient security, where the act is considered a judicial one,² except where the legislature imposes on the judge express liability for failure to require security or to exercise certain precautions in taking the same, in which event the liability is that fixed by the terms of the statute.³

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Footnotes

- 1 Tex.—*Heyn v. Massachusetts Bonding & Insurance Co.*, 110 S.W.2d 261 (Tex. Civ. App. Dallas 1937), writ dismissed w.o.j., (Jan. 12, 1938).
- 2 S.C.—*Lide v. Fidelity & Deposit Co. of Maryland*, 191 S.C. 297, 4 S.E.2d 263 (1939).

 Tex.—*Jarnagin v. Garrett*, 69 S.W.2d 511 (Tex. Civ. App. Texarkana 1934), writ refused.
- 3 Ky.—*Com. v. Lee*, 120 Ky. 433, 27 Ky. L. Rptr. 806, 86 S.W. 990 (1905), modified on other grounds, 120 Ky. 433, 28 Ky. L. Rptr. 596, 89 S.W. 731 (1905).

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